

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DEAN D.

Claimant,

vs.

FAR NORTHERN REGIONAL CENTER

Service Agency

OAH No. 2006030594

DECISION

On May 2, 2006, in Chico, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Tami D. Jessen, claimant's parent and conservator, appeared on his behalf.

The service agency, Far Northern Regional Center (regional center) was represented by Phyllis Raudman, Attorney at Law.

Evidence was received, the record was closed and the matter was submitted on May 2, 2006.

FACTUAL FINDINGS

1. Claimant's date of birth is October 30, 1980. Claimant applied for services as a client of the service agency in 2006, when he was 26 years old. The service agency conducted an evaluation of claimant's information and records and determined that claimant is not eligible for services. Claimant was found ineligible for regional center services on the ground that he does not have mental retardation, epilepsy, cerebral palsy, autism or other condition similar to mental retardation and requiring treatment similar to that required by mentally retarded individuals. The service agency found that it could not be established that claimant has a developmental disability which originated before age 18.

2. Claimant has had three traumatic head injuries. On September 19, 1990, when he was nine years old, he was riding his bicycle when a friend grabbed his handlebars. Claimant flew over the handlebars and sustained a closed head injury. On June 19, 1997, when he was 16 years old, claimant was severely beaten by teenagers and sustained a closed head injury. On March 31, 2000, when claimant was 19 years old, he was driving a vehicle at over 80 miles per hour and crashed into a tree. He suffered a traumatic brain injury as well as multiple other serious bodily injuries. At the hearing of this matter, the parties stipulated that as a result of the March 2000, accident, claimant sustained major head trauma which resulted in severe cognitive difficulties. Claimant's cognitive difficulties continue to this day.

3. The issue in this proceeding is whether respondent suffered a substantially handicapping condition prior to his 18th birthday, which was a condition similar to mental retardation or requiring services and supports similar to those required by a person with mental retardation.

4. Lisa Benaroni, M.D., the regional center medical director, evaluated claimant's medical, educational and related records. She determined that he did not have a developmental disability present before he reached age 18, which was a substantial handicap in a minimum of three areas of functioning. Accordingly, she determined that claimant was not eligible for regional center services. Dr. Benaroni is well qualified to make this determination. She graduated from Yale Medical School in 1997. She completed a double residency at Chapel Hill in pediatrics and neurological developmental disabilities and is board certified in these areas.

5. Dr. Benaroni based her opinion on several factors which demonstrate that claimant did not have a condition similar to mental retardation prior to his 18th birthday. Claimant had never been placed in special education classes. He passed the high school diploma equivalency test and gained a General Education Diploma (GED). Claimant took standardized group scholastic aptitude tests in the school years 1990 through 1996. On April 10, 1996, at grade 9.7, claimant ranged from the 20th percentile to the 76th percentile, with a number of scores in the average range. His scoring correlated with an average intelligence quotient (IQ) of 90 to 100. His reading and language skills were average; his math scores were lower than average and the total battery scored average. A person with mental retardation would score at or below the second percentile. In Dr. Benaroni's opinion, claimant clearly did not function in the mental retardation range when he took this testing, three years after his second accident.

6. Claimant contends that he suffered cumulative head trauma in the first two accidents. He contends that it is quite common for children with closed head trauma to suffer developmental delays, and yet to remain undiagnosed. Claimant's family testified that his behavior changed dramatically and his cognitive abilities decreased significantly after his first and second head injuries. He developed anger problems, alienated his family and peers, and abused drugs. He was sent to a school with a small class of eight children. He was taken from class and given one on one instruction before being returned to class. Because of this attention, he did fairly well. However, he was placed in Paradise Intermediate School in the

7th grade and his behavioral problems worsened. He was often absent from school and did not complete assignments. He was abusing alcohol and marijuana. In the 11th and 12th grades, he was expelled from school and lived on the streets for a short while. He was ultimately placed in a continuation high school where he received one-on-one attention. He graduated from that program. He obtained the GED by verbally answering questions which were read to him.

7. There is no question that children with cognitive difficulties after closed head injury often go un-diagnosed or suffer developmental delays. There is also no question that claimant suffered sequela of head injury after his first two accidents. However, there is no medical evidence to support a finding that claimant suffered mental retardation or a condition similar to mental retardation requiring services and supports similar to a person with mental retardation. Even the non-medical evidence shows claimant was able to perform tasks which persons with mental retardation could not master. Claimant tested for and received a driver's license, and was able to drive a vehicle. He was an avid skateboarder. In October of 1998, claimant completed continuation high school, passing reading and writing competency examinations. He tested for and received a GED. Earlier tests of scholastic abilities, taken after the second injury, show average to below average achievement, with scores well outside of the range of mental retardation. Claimant did not require the types of services needed by one with mental retardation. For instance, he would not have benefited from repetitive patterned instruction; he would not require a simplistic, supervised and controlled work setting, and he would not require services to enable him to move about and function in the community.

8. It is clear that since the 2000 accident claimant has needs for extensive supports and services. He may very well have a condition similar to mental retardation, and now may require services and supports similar to those identified above. However, as set forth below, the law governing eligibility for regional center services excludes those whose disability began after age 18.

DECISION ON ISSUES

1. Under the Lanterman Developmental Disabilities Act, Welfare and Institutions Code section 4500 et seq., and Title 17, California Code of Regulations sections 54000 et seq., any resident of the State of California believed to have a developmental disability is eligible, upon application to the regional center, for initial intake, diagnostic and counseling services, and a determination regarding the need for assessment. Eligibility for ongoing regional center services is contingent upon the determination, after intake and assessment that the person has a developmental disability with substantial handicap as defined in this article.

2. Welfare and Institutions Code, section 4512, subdivision (a), defines developmental disability as follows:

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

3. There are several regulatory guidelines for assessing whether a claimant suffers from a developmental disability under this section. Title 17, California Code of Regulations, section 54000, subdivision (a), provides guidance in determining whether a claimant meets the criteria for eligibility set forth in Welfare and Institutions Code section 4512, subdivision (a). It provides in pertinent part:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

¶...¶

4. Title 17, California Code of Regulations, section 54001, subdivision (a), defines "substantial disability" as follows:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

¶...¶

As set forth in the Factual Findings, claimant did not have significant functional limitations prior to his 18th birthday.

5. Claimant bears the burden of proof in establishing, by a preponderance of evidence, that he is eligible for the services of the regional center. As set forth in the Factual Findings, claimant has not proven that he had a developmental disability as defined by this section. He did not have, prior to the age of 18, a condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation. Nor did his condition, prior to his 18th birthday, constitute a substantial disability.

ORDER

Claimant's request for an order directing the Far Northern Regional Center to provide services to him is denied.

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receipt of this Decision.

DATED: May 16, 2006

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings